

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR KING COUNTY

ROBERT PAYNE, individually

NO.

Plaintiff,

vs.

**COMPLAINT**

DENI DELIC, an individual, AARON  
MADRIAGA, an individual, JOSEPH TRAN,  
and individual, and CITY OF TUKWILA, a  
Washington municipality,

Defendants.

The Plaintiff, by and through his attorney of record, Dexter L. Callahan of Van Siclen,  
Stock & Firkins, complains and alleges as follows:

**I. PRELIMINARY STATEMENT**

**1.1** This is a complaint for excessive force and civil rights violations under 14 USC  
1983. Plaintiff's claim is brought to seek redress for police misconduct, and violation of Plaintiff's  
civil rights including use of excessive force against him.

**II. PARTIES, JURISDICTION AND VENUE**

**2.1** That all acts hereinafter alleged occurred within King County, Washington, and  
that this court has jurisdiction over this cause.



**3.3** The Plaintiff initially remained inside his residence but eventually exited at the request of Tukwila Police Officers. The Plaintiff then exiting his residence, with his hands above his head, was compliant with the officers' instructions, and placed his hands behind his back to be cuffed.

**3.4** After placing his hands behind waiting to be cuffed, several heavily armed and armored officers including the defendants performed an unnecessary and excessively forceful takedown on Mr. Payne, throwing him to the ground and holding him down with their knees on his head and body and causing injury to Plaintiff.

**3.5** As he was unexpectedly taken and held down, the Plaintiff flailed his arms and legs. In response, Tukwila Police Officer Deni Delic struck the Plaintiff in the head at least twice with his elbow, despite several officers having full control over the Plaintiff.

**3.6** All such force was unlawful, excessive, unreasonable, unjustified, violent, harmful, malicious, and caused extensive injury to Plaintiff. The unlawful and excessive force used against Plaintiff caused him physical pain, emotional distress, injury, insult, indignity, humiliation, and other injuries including economic loss.

3.7 The Plaintiff was eventually restrained and brought by ambulance to Valley Medical Center, where he received treatment for his injuries including but not limited to, contusions and hematomas, and a subsequent mental health evaluation.

#### IV. FIRST CAUSE OF ACTION

## EXCESSIVE FORCE

4.1 The Defendant's actions in failing to deescalate the encounter, which originated as a welfare check, and the excessive and violent takedown and arrest of Plaintiff despite his



1 compliance with the responding Officer's directions constitute excessive use of force in violation  
 2 of Mr. Payne's civil rights.

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 4 **4.2** The Defendants Delic, Madriaga, and Tran are liable for the use of excessive force,  
 5 both individually and as agents of the City of Tukwila Police Department.

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 7 **4.3** The Defendant City of Tukwila Police Department is liable for the actions of its  
 8 employees who used excessive force by reason of the following:

9 **a.** The Defendant City of Tukwila Police Department has either a  
 10 formal or informal policy or custom of allowing its officers to engage in the use of  
 11 excessive force when making an arrest by asserting such force against arrestees so as to  
 12 cause grievous bodily harm.

13  
 14 **b.** The use of such force has been sanctioned or approved by those in  
 15 charge of policy in the Tukwila Police Department as evidenced by the lack of disciplinary  
 16 investigation or action when arrestees suffer serious bodily injury.

17  
 18 **4.4** As a direct result of the City of Tukwila Police Department allowing its officers to  
 19 conduct arrests in a manner which produces serious bodily harm, the Plaintiff has been injured.

## 20 **V. SECOND CAUSE OF ACTION**

### 21 **NEGLIGENCE**

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 23 **5.1** The Plaintiff realleges paragraphs I through IV above.

24  
 25 **5.2** The Defendants Delic, Madriaga, and Tran by failing to restrict or restrain their use  
 26 of excessive force against the Plaintiff, were negligent in their actions by not using less injurious  
 27 methods to conduct his investigation and arrest of Plaintiff.

28  
 29 **5.3** The city of Tukwila Police Department is liable for the negligence of its employees  
 30 in failing to restrict or restrain their use of excessive force.

6.1 That as a direct and proximate result of the said incident, the plaintiff sustained injuries; that although medical attention and supportive remedies have been resorted to, said injuries, together with pain, discomfort and limitation of movement, prevail and will continue to prevail for an indefinite time into the future; that it is impossible at this time to fix the full nature, extent, severity and duration of said injuries, but they are alleged to be permanent, progressive and disabling in nature; that the plaintiff has incurred and will likely continue to incur medical expenses and other expenses to be proved at the time of trial, all to their general damages, in an amount now unknown.

6.2 That as a direct and proximate result of the use of excessive force against Plaintiff he has incurred injuries to his mental state including but not limited to extreme emotional distress, pain, suffering, humiliation, loss of enjoyment of life, annoyance, and inconvenience.

**6.3** That as a direct and proximate result of Defendants actions Plaintiff has suffered deprivation of his civil rights due to use of excessive force causing serious and permanent injury to Plaintiff under the color of law.

**6.4** The plaintiff asserts the physician/patient privilege for 88 days following the filing of this complaint. On the 89th day following the filing of this complaint, the plaintiffs hereby waive the physician/patient privilege. That waiver is conditioned and limited as follows: (1) The plaintiffs do not waive their constitutional right of privacy; (2) The plaintiff does not authorize contact with the their health care providers of any kind except by judicial

1 proceeding authorized by the Rules of Civil Procedure; (3) Representatives of the defendants  
 2 are specifically instructed not to attempt ex parte contacts with health care providers of the  
 3 plaintiffs; and (4) Representatives of the defendants are specifically instructed not to write  
 4 letters to plaintiffs' health care providers telling them that they may mail copies of records to  
 5 the defendants. In the case of Loudon v. Mhyre, 110 Wn.2d 675, 756 P.2d 138 (1988), the  
 6 Supreme Court dealt very simply with the issue of ex parte contact with the plaintiff's  
 7 physicians:  
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10 The issue presented is whether defense counsel in a personal injury action may  
 11 communicate ex parte with the plaintiff's treating physicians when the plaintiff  
 12 has waived the physician/patient privilege. We hold that defense counsel may  
 13 not engage in ex parte contact, but is limited to the formal discovery methods  
 14 provided by court rule.

15 Loudon, at 675-676.

16 WHEREFORE, plaintiff pray for the following relief:

- 17 1. A judgment against the Defendant, in an amount to be determined at trial,  
 18 sufficient to compensate the Plaintiff for the injuries described above; and  
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- 20 2. For punitive damages against the Defendants; and  
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- 22 2. For reasonable attorney fees in accordance with 42 USC 1988 and 42 USC  
 23 1983, and any other applicable law; and  
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- 25 3. For such other and further relief as the court may deem just and equitable under  
 26 the circumstances.

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1 DATED this 3rd day of May, 2022.

2 VAN SICLEN, STOCKS & FIRKINS

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4 By: /s/ Dexter L. Callahan  
5 Dexter L. Callahan, WSBA #53119  
6 Attorney for Plaintiff  
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